



July 12, 2011

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th St. SW
Washington, DC 20554

Re: WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 96-45

Dear Ms. Dortch:

On July 11, John Bergmayer and Harold Feld of Public Knowledge (PK) met with Sharon Gillett, Alex Minard, Amy Bender, Carol Matthey, Rebekah Goodheart, and Patrick Halley to discuss Universal Service Reform.

PK argued that a “self-provisioning” model could help get broadband to certain high-cost places. Not all high-cost areas are alike, and often the best people to provide broadband to a particular area are people who are in that area themselves. A self-provisioning approach gives them the tools they need to do that. This proposal, which is complementary to more comprehensive reforms, would require that fund recipients make interconnection points and backhaul capacity available to neighboring, unserved communities. One drawback of the FCC’s current Connect America Fund (CAF) proposals is its drawback from the concept of true *universality* of access. But coupled with a modest one-time grant for equipment expenditures, a self-provisioning approach could ensure that some communities that might be left behind can get connected.

As a public interest obligation on fund recipients, PK’s self-provisioning approach would not pose any issues of legal authority. But because the FCC has chosen to keep broadband providers under Title I, there may be challenges to comprehensive high-cost reform. For instance, the Anti-Deficiency Act, 31 U.S.C. § 1341, applies to the USF. *See* GAO, Statement of Patricia A. Dalton, Managing Director Physical Infrastructure Issues Application of the Antideficiency Act and Other Fiscal Controls to FCC’s E-Rate Program”, at 30 (“USF is subject to the Antideficiency Act.”). Without an exemption to the Act the USF would be very cumbersome to administer, and less effective. Congress has therefore granted the FCC an exemption to the Act for “any amount collected or received as Federal universal service contributions required by section 254 of the Communications Act of 1934 (47 U.S.C. 254), including any interest earned on such contributions; [and] ... to the expenditure or obligation of amounts attributable to such contributions for universal service support programs established pursuant to that section.” Universal Service Antideficiency Temporary Suspension Act, PL 108–494 (2004). The act was last extended to the end of calendar year 2011. Continuing Appropriations and Surface Transportation Extensions Act, PL 111–322 (2010). This exemption is narrow, but the FCC’s plans for the CAF are ambitious. PK suggested that one way to direct funds to non-traditional ETCs while comporting with the exemption would be to classify interconnected VoIP as a Title II service. Broadband resellers of interconnected VoIP could then qualify to receive funds. *See* 47 U.S.C. 214(e)(1)(A); 47 U.S.C. 153(46). PK further argued that Title II classification of interconnected VoIP would not, by itself, lead to any particular access

charge regime for VoIP calls, and observed that the status of voice generally has become more an issue in a time when people are seriously discussing “shutting down” the PSTN.

PK further argued that the FCC should classify text messaging as a Title II service, and that it should expect gamesmanship if it allows carriers to apportion costs on consumers’ bills between services subject to USF assessments and those that are not.

Respectfully submitted,

/s John Bergmayer
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Public Knowledge